BAIL SLIP

C.A.Nos 195 of 1999 & 1073 of 2003

The Accused in both appeals was direced to the be released on bail by the order of this Court, dated 16.3.99 and 17.7.2003 and made in Crl.M.P.2018/99 and in C.A.No. 195/99 Crl.M.P.No.6412/2003 in C.A.No. 1073/2003 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL Nos. 195/1999 and 1073/2003

P.Selvarajan ..Appellant in both appeals

-vs-

State rep.by S.P.E
CBI GOW,Cochin
Kerala Branch
(Cr.No.R.C.No.32/81) .. Respondent in Crl.A.No.195/1999

State rep.by Deputy Superintendent of Police
Special Police Establishment
(CBI Police)/GOW
Chennai Branch, Chennai
(R.C.No.3/82) .. Respondent in Crl.A.No.1073/2003

These appeals are filed against the Judgment dated 26.2.1999 & 30.6.2003 respectively passed in C.C.No.2/1998 and 3/1998 on the file of the III Additional Sessions Judge/Special Judge for C.B.I.Cases, Coimbatore respectively.

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For appellant: : Mr.K.V.Sridharan
For respondents: : Mr. N.Chandrasekaran,
Spl.P.P. For CBI Cases

COMMON JUDGMENT

Crl.A.No.195 of 1993 has been preferred against the Judgment in C.C.No.2 of 1998 on the file of Court of III Additional Sessions Judge/Special Judge for C.B.I.Cases, Coimbatore. The appellant is

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P.Selvarajan /A2 in C.C.NO.2 of 1998.

Crl.A.No.1073 of 2003 has been preferred against the Judgment in C.C.No.3 of 1998 on the file of Court of III Additional Sessions Judge/Special Judge for C.B.I.Cases, Coimbatore. The appellant is P.Selvarajan /A2 in C.C.NO.3 of 1998.

Crl.A.No.195/1993:

The appellant was charged along with the co accused A1 and deceased Nandakumar and Padmanabhan who is subsequently become approver,during the years 1980 and 1981 at Coimbatore agreed to do certain illegal acts, to wit , A1 and A2 and deceased Nandakumar to commit criminal mis conduct and to cheat the National Textiles Corporation Ltd., Coimbatore by illegal means and to get undue pecuniary advantage to Approver Padmanabhan and A1 and A2 and deceased Nandakumar, abused their official position by creating false documents, that the work for transportation of textile goods was awarded to two bogus firms viz., M/s P.Sasikumar in 1980 and to M/s Sreedevi Transports in 1981 by getting bogus quotations and preparing false comparative statements dated 5.6.1980 and 8.1.1981 and Approver Padmanabhan presented three false bills in the name of M/s P.Sasikumar and twenty four false bills in the name of M/s Sreedevi Transports for transportation charges for the alleged transportation of textile goods from Divisional Office of National Textiles Corporation to various show rooms of the National Textile Corporation in Kerala without actually transporting any material at all as declared in their bills, and A1 and A2 and deceased Nandakumar knowing fully well of the above fact, passed and released a sum of Rs.42,200/- enabling Approver Padmanabhan to withdraw the said amount which were subsequently shared by A1 and A2 and deceased Nandakumar and Approver, and thereby A1 and A2 committed an offence punishable under Section 120-B of IPC r/w 420 IPC and Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act,1947.

2a. Charge Nos.2 to 11 are against A1 who is now no more. Charge No.12 is against A2, the appellant herein. A2 in pursuance of the said criminal conspiracy on or about 2.12.1980 at Coimbatore, at the above said place by corrupt or illegal means or by otherwise abusing his official position as such public servant, obtained for Approver Padmanabhan who produced three bogus bills dated 24.11.1980 and 22.11.1980 in the name of M/s P.Sasikumar, a fictitious transport firm showing transportation of textile goods from Distribution Sales Department, N.T.C.Coimbatore to various show rooms at Kasargod, Kunnamkulam, Tellicherry, Kottayam and Ernakulam without transporting any textile goods, pecuniary advantage to the extent of Rs.4,950/- by enabling him to withdraw the said amount by passing a cheque No.600188 by countersigning dishonestly the voucher No.1028 pertaining to the abovesaid bogus bills on which the said vouchers and cheques were passed and thereby A2 committed an offence punishable under Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947(1st count).

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b) Charge No.13 is also against this appellant which reads as follows:

In pursuance of the said criminal conspiracy on or about 18.2.1981 at the above said place by corrupt or illegal means or by otherwise abusing his official position as such public servant obtained for Approver Padmanabhan who produced four bogus bills dated 20.1.1981 and 27.1.1981 in the name of M/s Sreedevi Transport Company, a fictitious firm showing transportation of textile goods from Distribution Sales Department, N,.T.C.Coimbatore to various show room at Trivandrum, Ernakulam, Alleppy and Trichur, Kunnankulam and Quilon without transporting any textile goods, pecuniary advantage to an extent of Rs.7,200/- by allowing him to withdraw the said amount through Cheque No.040096 by countersigning dishonestly the voucher No.1364 pertaining to the abovesaid bogus bills on which the said voucher and cheque were passed and thereby A2 committed an offence punishable under Section 5(2) r/w Section 5(1)(d) of Prevention of Corruption Act 1947 (2nd count).

c) Charge No.14 against A2 is to the effect that in pursuance of the said criminal conspiracy on or about 8.5.1981 at the above said place by corrupt or illegal means or by otherwise abusing his official position as such public servant obtained for Approver Padmanabhan who produced four bogus bills dated 3.5.1981 in the name of M/s Sreedevi Transport Company, a fictitious transport firm showing transportation of textile goods from the Distribution Sales Department,N.T.C. Coimbatore to various show rooms at Quilon, Trichur, Chenganacherri and Ernakulam I and II and Kunnankulam without transporting any textile goods, pecuniary advantage to the extent of Rs.6,400/- by enabling Approver Padmanabhan to withdraw the said amount through Cheque No.52058 by countersigning dishonestly the voucher NO.164 pertaining to the abovesaid bogus bills on which the said voucher and cheque were passed and thereby A2 committed an offence punishable under Section 5(2) r/w 5(1)(d) of the Prevention of Corruption Act,1947(3rd count).

d) Charge No.15 relates to A1 according to which in pursuance of the said criminal conspiracy on or about 30.7.1981 at the above said place by corrupt or illegal means or by otherwise abusing his official position as such public servant obtained for Approver Padmanabhan who produced five bogus bills dated 22.7.1981 and two bogus bills dated 25.7.1981 and one dated 28.7.1981 in the name of M/s Sreedevi Transport Company, a fictitious transport firm showing transportation of textile goods from the Distribution Sales Department,N.T.C. Coimbatore to various show rooms at Alleppy, Ernakulam I and II, Trivandrum, Chenganacherri,Quilon and Kunnankulam,Trichur and Chittoor without transporting any textile goods, pecuniary advantage to the extent of Rs.7,800/- by enabling Approver Padmanabhan to withdraw the said amount through Cheque No.267630 dated 30.7.1981 by countersigning dishonestly the voucher NO.529 pertaining to the abovesaid bogus bills on which the said voucher and cheque were passed and thereby A2 committed an offence punishable under Section 5(2) r/w 5(1)(d) of the Prevention of Corruption Act,1947(4th count).

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e) Charge No 16 against A2 is that in pursuance of the said criminal conspiracy on or about 4.9.1981 at the above said place by corrupt or illegal means or by otherwise abusing his official position as such public servant obtained for Approver Padmanabhan who produced five bogus bills of which two dated 25.8.1981 and one bill each dated 28.8.1981, 27.8.1981 and 31.8.1981 in the name of M/s Sreedevi Transport Company, a fictitious transport firm showing transportation of textile goods from the Distribution Sales Department,N.T.C. Coimbatore to various show rooms at Trivandrum, Chenganacherri, Kottaiyam, Kasargod, Tellicherry, Kannanur, Quilon, Kunnankulam and Alleppy without transporting any textile goods, pecuniary advantage to the extent of Rs.7,850/- by enabling Approver Padmanabhan to withdraw the said amount through Cheque No.267736 dated 30.7.1981 by countersigning dishonestly the voucher NO.729 pertaining to the abovesaid bogus bills on which the said voucher and cheque were passed and thereby A2 committed an offence punishable under Section 5(2) r/w 5(1)(d) of the Prevention of Corruption Act,1947(5th count).

3. The case was taken on file against A1 and A2 under Sections 120 (b) IPC r/w 420 IPC and under Section 5(2) r/w 5(1)(d) of Prevention of Corruption Act 1947 and numbered as C.C.No.8 of 1984 on the file of Additional Special Judge and First Additional Sessions Judge, Coimbatore and renumbered as C.C.No.2 of 1998.

4. On the side of the prosecution P.W.1 to P.W.35 were examined and Exs P1 to P194 and M.Os 1 and 2 were marked. On the side of the respondent D.W1 was examined and Exs D.1 to D5 were examined.

5.Pending appeal, A1 died and the case proceeded against A2. On appearance of the accused, copies under Section 207 Cr.P.C. Were furnished to the accused, when questioned the accused, pleaded not guilty. The third accused Padmanabhan was turned and treated as Approver.

6. P.W.1 is the approver K.Padmanabhan who was shown as accused in the first information report. Admittedly, the accused were working in National Textile Corporation, Coimbatore. During 1981, the first accused was working in the National Textile Corporation, Coimbatore as a Divisional Manager, he died pending trial. So as far as A1 is concerned, the charge has already been abated. A2 is the appellant herein. A3 is the approver. P.W.1 and A4 is also now no more. Against whom, the charge has already been abated. According to P.W.1, A2 was working as an Assistant Manager in the National Textile Corporation, Coimbatore. As per Ex C1 application filed by A3, he was treated as an Approver as per Ex C3 proceedings. Ex C2 is the affidavit filed by the Approver(A3).

7. The charge against accused in a nutshell is that the accused prepared bogus bills as to show that they have transported bales of cloth from National Textile Corporation Divisional Office to several showrooms in lorries and claimed various amounts but actually without transporting any cloth bundles from the above said Divisional Office. For the above

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said purpose in the name of Approver's son Sasikumar, bogus letter pad in the name of " Sasikumar Clearing and Forwarding Agency" was printed and the letter was addressed to National Textile Corporation Manager, Coimbatore under Ex P1 under forged signature of Sasikumar by A3 approver. Ex A2, Ex A3 and Ex A4 bogus bills were prepared by him to show that several bales of cloth were removed from the abovesaid National Textile Corporation's Divisional Office, Coimbatore to showrooms. Ex P5 is the cheque issued in the name of Syndicate Bank , R.S.Puram Branch and that he had opened Savings Account in the name of his son Sasikumar and the said account was operated by him and Ex P5 cheque was also deposited in the said account. EX P6 is the bogus specimen signature and with the help of a cheques, he had drawn amounts from the said account twice and the said account was handed over to the deceased Nandakumar. Another bogus letter pad under Ex P7 was printed in the name of M/s Sreedevi Transport Company and has given several bogus bills from the year 1981 January to 1981 September and the said bills are Exs P8 to P57. He further admitted that the above said Exs P8 to P57 contain signatures which are forged by him. M.O.1 is the bogus Rubber Stamp for "P.Sasikumar Transport Company" and M.O.2 is the bogus Rubber Stamp for "M/s Sreedevi Transport Company". According to the Approver, the cheques drawn in the name of Sreedevi Transport Company by National Textile Corporation , Coimbatore were deposited by him with Dhanalakshmi Bank at Coimbatore. EX P63 is an application given by him on 19.2.1983 to open the savings Account. Ex P64 is the declaration form. Exs P65 to P77 are the cheques under which he received the amount from Dhanalakshmi Bank. Ex P91 is the bill given in the name of Sreedevi Transport Company. Exs. P92 to P 95 are the bills given in the letter pad of Sasikumar. Ex P96 is the cheque issued in the name of Sasikumar. Ex P97 is the voucher signed by him in the name of Sasikumar. Ex P98 is the specimen signatures and Ex P99(series) is the forged signature of Sasikumar by him and that he was arrested in the year 1982 by C.B.I.

8. P.W.2 is the Assistant during the relevant period in the National Textile Corporation, Coimbatore. He would depose to the fact that at the time A1, A2, deceased Nandakumar and the approver Padmanabhan were working in the said office. He would depose that on the basis of the orders received from out station, the goods will be supplied from the National Textile Corporation godown to various branches of National Textile Corporation and that approver Padmanabhan produced several bills to show that the goods were taken from the godown of National Textile Corporation, Coimbatore to various branches and that he has prepared voucher on the basis of the bills produced by P.W.1 Padmanabhan(Approver) and the bills were sent to the Assistant Manager(Accounts) to Divisional Manager. He has also identified that Exs P1 to P11 biils were came to his hand for sanction of money. Ex P12 is the cheque for Rs.7200/- issued by the National Textile Corporation. Ex P13 is the voucher under which P.W.1 has signed as a person who had received the amount. Exs P14 to P17 are the bills produced in the name of Sreedevi Transport Company. Ex P18 is the cheque for Rs.6550/- under the said bill. P.W.2 has prepared cheque for the said amount in which first accused Vijayaraghavan has

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signed . Ex P19 is the voucher relating to the said cheque. P.W.1 has signed as a person received the amount under the cheque. Ex P22 and EX P23 are the bills supplied by Sreedevi Transport Corporation. Ex P24 is the cheque for Rs.6400/- which was prepared by him in which A1 has signed. Ex P25 is the voucher under which P.W.1 Padmanabhan has received the amount. Ex P26 to Ex P34 are the bills in the name of Sreedevi Transport. Ex P35 is the voucher prepared by him on the basis of the abovesaid bills. As per the said voucher Rs.12,000/- was received by P.W.1 Padmanabhan. Exs P36 to P40 are the bills produced in the name of Sreedevi Transport Company. Ex P41 is the voucher for Rs.7,800/- prepared by P.W.2 on the basis of the abovesaid bills. P.W.1 Padmanabhan has signed in the said voucher and received the cheque. The particulars of the cheque has been furnished in Ex P41 voucher itself. Ex P42 to Ex P44 are the bills in the name of Sreedevi Transport Company. Ex P45 is the cheque for Rs.4900/- in which the first accused has signed. Ex P46 is the voucher prepared by him in which P.W.1 Padmanabhan has signed for having received the cheque for the abovesaid bill amount. Ex P53 voucher was prepared by the co employee Jayakumar. Ex P52 cheque contains the signature of the first accused. Ex P61 cheque was drawn by the first accused Vijayaraghavan. Ex P60 is the voucher prepared by the co employee Jayakumar. He has signed in the voucher since there was no Assistant Manager at that time. Ex P5 is the cheque prepared by him in which A1 has signed. Ex P2 to P4 bills were prepared by one P.Sasikumar in which deceased Nandakumar has signed on the reverse of the bills.

8a)P.W.3 is the Salesman in the National Textile Corporation Showroom at Peelamedu. He would depose that all the accused including the deceased Nandakumar and P.W.1 were working in the National Textile Corporation, Branch at Coimbatore. He also speaks about the procedure under which the goods were despatched from the National Textile Corporation to various showrooms.

8b). P.W.4 is the Assistant in the National Textile Corporation. According to P.W.4, vouchers were signed by the second accused. He would say that during 1980-1981, he has prepared Ex P60 voucher. He would state that only under the instructions of A1, he prepared that voucher. According to him, Ex P58 and EX P59 contain the signatures of the deceased accused Nandakumar. On the basis of Ex P60, Ex P61 cheque was prepared by him and Exs P60 and P61 were sent to the first accused. He has also prepared Ex P53 voucher in respect of Exs P47 to P51 bills. Ex P52 is the cheque prepared on the basis of the said bills. The deceased first accused Vijayaraghavan has signed in the voucher as well as in the cheque. The said cheques were given to P.W1 Padmanabhan, the approver herein.

8c)P.W.5 initially joined as Lower Division Clerk in the National Textile Corporation, Coimbatore in the year 1975 and now he was promoted as Assistant in the year 1978. He has identified the signatures of A1, A2 and the deceased Nandakumar in the abovesaid exhibits.

8d) P.W.6. is also an employee in the National Textile Corporation,

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Coimbatore. He speaks about the maintenance of stock register in the godown and used to prepare indent for purchasing the goods.

8e) P.W.7 is the Junior Assistant of the National Textile Corporation, Bangalore branch in the Sales Division. He joionend in the year 1975 at Coimbatore branch under the second accused/appellant herein . A1 Vijayaraghavan was the Divisional Manager at that time in the said branch. According to him, the approver Padmanabhan gave several bills for the transporting the goods to several branches. He has also deposed to the fact that in Ex P35 cash voucher, he has signed when A2 was on leave and also he has signed in Ex P15 voucher on behalf of the Assistant Manager. He has deposed to the fact that as per the request made by the second accused P.Selvarajan/appellant herein, he has signed in the voucher without verifying the same.

8f) P.W.8 is the Salesman at Parvathi Mills, Quilon which is a sister concern of National Textile Corporation. On 28.11.1981 he was working as a Marketing Divisional Manager at Coimbatore , National Textile Corporation.P.W.9 is the Deputy Manager in National Textile Corporation Unit, in New Delhi. The Managing Director in New Delhi is in charge of all the 9 NTC subsidiaries. Coimbatore is the one of the subsidaries. Dr.H.G.Battacharya was the Managing Director in the year 1984-85. P.W.9 was special Assistant to Dr.Battachari, who retired from the service in the year 1986, subsequently he joined in the World Bank. P.W.9 knows his signature and Dr.Battachari since P.W.9 is in service for the past 21 years. Ex.A1 & A2, sanction orders were passed by Dr.Battachari. The said sanction order is to prosecute A1 and A2 passed by Dr.Battachari, which is marked as Ex.P.101. Ex.P.101 was signed in the presence of P.W.9.

8g) P.W.9 is the Deputy Manager in National Textile Corporation Unit, in New Delhi. The Managing Director in New Delhi is in charge of all the nine National Textile Corporation subsidiaries. Coimbatore is the one of the subsidary. Dr.H.G.Battacharya was the Managing Director in the year 1984-85. P.W.9 was special Assistant to Dr.Battachari, who retired from the service in the year 1986, subsequently he joined in the World Bank. P.W.9 knows his signature and Dr.Battachari since P.W.9 is a in service for the past 21 years. Ex.A1 & A2, sanction orders were passed by Dr.Battachari. The said sanction order is to prosecute A1 and A2 passed by Dr.Battachari, which is marked as Ex.P.101. Ex.P.101 was singed in the presence of P.W.9.

8h) P.W.10 is the Shop Manager in National Textile Corporation at Kottayam. According to him, the textile goods would be transported from Coimbatore through registered companies TVS,CCG,ARS etc., For the receipt of the textile goods in the showroom a Goods Inward Register was maintained. In the said Register the details regarding the number of parcels, lorry receipt number , the point of destination and the point of receipt and the weight of the parcel etc would be recorded in the said inward register and he also speaks about the procedure under which the

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goods will be despatched to various showrooms. He has also identified Exs P2, P3, P8, P21,P22,P36,P39,P40,P49,P50 and P51 receipts.

8i)P.W.11 is also a Shop Manager in Quilon. Previously from 1981 to 1986 he was working as the Shop Manager in Chengancherry Show room. He has identified the hand writings of Kesava Nair, shop Manager in Chengancherry show room during the relevant period. Ex P107 is the challan maintained in the Divisional Office, Coimbatore from 1980-81. Ex P108 series, six challans contain the signature of Kesava Nair.

8j) P.W.12 is the Shop Manager of Cannanore Show room of National Textile Corporation. Ex P112 is the Kunnamkulam challan file maintained in the Divisional Office, Coimbatore for the period 1980-81. 7 Challans from Challan Nos.6/80-81 to 12/80-81 contain the signature of Sasi Menon who was then working as Shop Manager in Kunnamkulam show room during that period. Ex P113 series are the challans Nos.6/80-81 to 12/80-81. The signatures of Sasi Menon were identified by him. Ex P115 series are six challans from Challan No.1/81-82 and 2/81-82 containing the signatures of Viswanathan the then Salesman, all other challans 3/81-82 to 6/81-82 containing the signatures of K.Sasi Menon , Shop Manager.

8k) P.W.13 is the Assistant Sales Man in Kunnamkullam National Textile Corporation Show Room. He has also identified Ex P113 (series) Challans and Ex P115 (series) challans . P.W.14 is the Shop Manager in National Textile Corporation. He speaks about Exs P118,(series),P119 and P120 (Series) in the above said challans, he has signed and that under the above said challans goods were received. Ex P121 is the Inward Register maintained in Trichur show room for the period from1979 to 1982. He has identified ExsP2,P3, P8, P21, P22, P36, P39, P40, P49, P50 and P51.

8l)P.W.15 is the Inspector at National Textile Corporation Marketing Division, Bangalore. He has identified Exs P122 is the Inward Register for the period from 1979 to 1982 maintained in the Cannanore Show room. Ex P122 contains the signature of him. P.W.16 is working as Senior Salesman in National Textile Corporation show room at Trichur. Previously from 1981-82 he was working as Shop Manager in National Textile Corporation show room , Ernakulam. He has identified Ex P123 challan and Ex P124 (series) challan which contain his signature.

8m) P.W.17 is the Manager of National Textile Corporation Show room , M.GH.Road, Ernakulam, He has identified Ex P123 challan,Ex 125 Inward Register and Ex P126 challan which contain his signature.P.W.18 is a Salesmann in National Textile Corporation show room, Cochin. He has identified Ex P127 , Ex P128 and Ex P129. P.W.19 is the Manager in National Textile Corporation show room, Ernakulam. He has identified Exs P133, P134 and 135 challans contain his signature. Ex P136 is the Inward Register.

8n) P.W.20 is the shop Manager of National Textile Corporation Show room , Palai. He has identified Exs P137,138,139,140,141 and 142. P.W.21

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is the Senior Sales Man at National Textile Corporation , kasargodu from 1977-1983. He has identified Ex P144 challan relating to the goods sent to National Textile Corporation Kasargodu. He has identified Ex P.145 (series) challans. Ex P146 is the Inward Register.

8o)P.W.22 is the Salesman, National Textile Corporation Show room, Tellicherry. He has identified Exs P3,P8,P21,P22, P36,P39, P40, P49 ,P50 and P51. P.W.23 is the then Shop Manager of National Textile Corporation, Chittor. He has identified Ex P147, Ex P148 (series), Ex P150, ExP151. P.W.24 is the showroom in charge in Handloom Development Corporation, Chittoor. He has identified Ex P151 Inward Register. P.W.25 is the Assistant Salesman, National Textile Corporation Show room , Chittoor. He has identified Ex P146.

8p)P.W.26 is the Postman at Coimbatore Central Post Office. According to him, he is working as a Postman at Coimbatore and that the postal covers received in the name of Clearing and Forwarding Agent at Door No.123, Marakarananjappa Gounder Street and to Sreedevi Transport Company were returned without service of summons. Ex P152,Ex P153 are the Beet No.III. P.W.27 is a Company Manager in Associate Traders and Engineerings Limited, Coimbatore. He has identified the signature of Arunachalam under Ex P154.

8q) P.W.28 is the Assistant Manager at R.S.Puram Syndicate Bank . He has identified Exs P5, P12, P18, P24, P45, P52 and P61. ExP155 is the National Textile Corporation Account. Ex P159 is the counterfoil for Ex P23 cheque. P.W.29 is the retired Income Tax Officer, Coimbatore. As per directions of his higher officer Srinivasan, he went to the National Textile Corporation, Coimbatore. He has identified Ex P163.

8r) P.W.30 is the Assistant Manager of C.G.Home Appliances. Previously he was working in C.C.Transport Company,Coimbatore. He speaks about Ex P165 to show that Thiru K.Krishnan left the Company and started his own company. P.W.31 is the Joint Transport Commissioner, Chennai who was working under Home Department and that he retired from service in the year 1992. He has identified Ex P166. P.W.33 is the Deputy Government Examiner of Documents at Hyderabad . He has compared the signatures of the accused that of the disputed signatures and given his reports Exs P171,P172 and P173. P.W.34 is the Senior Grade Assistant in the National Cotton Limited(Tamil Nadu and Pondicherry). He has identified Exs P174, P175 and P176. P.W.35 is the Deputy Superintendent of Police, CBI, Bangalore. He has investigated the case and filed charge sheet against the accused. When incriminating circumstances were put to the accused, they denied their complicity with the crime.

9. The learned trial Judge, after going through the oral and documentary evidence, has come to a conclusion that the guilt against the accused has been proved beyond any reasonable doubt and accordingly he convicted A2 under Section 120-B r/w Section420 IPC and under Section5(2) r/w Section 5(1)(d) of Prevention of Corruption Act 1947(five counts) and

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sentenced to each offences to undergo a rigorous imprisonment for three years and to pay a fine of Rs.1,000/- for each offence. In default , to undergo a further period of nine months rigorous imprisonment on each offence. All sentences of imprisonment imposed for each offence on the second accused is to run concurrently. Total fine comes to Rs.6000/-. Aggrieved by the findings of the trial Judge, the second accused has preferred this appeal(Crl.A.No.195 of 1999).

Crl.A.NO.1073/2003

10. This appeal has been preferred against the Judgment in C.C.No.3 of 1998 on the file of the Court of III Additional District Judge (CBI Cases) Coimbatore.

11.Pending trial, A1 and A3 died. So the charge has been abated against A1 and A3. The charge levelled against A2 P.Selvarajan is that while he was working in the National Textile Corporation as a public servant in the Marketing Division along with other accused and approver Padmanabhan on or about the period between April 1980 and November 1981 at Coimbatore and other places agreed to do an illegal act to wit, to commit offences of cheating, criminal breach of trust and criminal misconduct by producing false purchase bills, showing alleged purchases of packing materials and thereby inducing National Textile Corporation,Marketing Division, Coimbatore to part with huge amount to the tune of Rs.63,350/- and thereby committed an offence punishable under Section 120-B IPC r/w Sections 420 and 409 IPC and 5(1)(c) and 5(1)(d) r/w 5(2) of Prevention of Corruption Act 1947.

11a) The second charge against the accused is he dishonestly prepared a false bill for Rs.4,225/- and inducing the National Textile Corporation to deliver a sum of Rs.4,225/- and adjusted towards advance amount said to have been paid to the approver Padmanabhan and the balance amount of Rs.1,725/- was paid to the approver thereby committed an offence punishable under Section 420 IPC.

11b) Charge Nos.4,5,6,7,8,9,10,11,12,30,31,32,33,34,35 and 36 are all under Section 420 IPC. 25th and 26th ,37th,38th,49th and 50th charges are under Sections 109 and 409 IPC. All other charges are under Sections 5(1) (d) and 5(2) of the Prevention of Corruption Act 1947.

12. When the case was taken on file, on appearance of the accused copies under Section 207 Cr.P.C. were furnished to the accused and when questioned the accused pleaded not guilty.

13.P.W.1 Padmanabhan, the approver, who speaks about the way in which the above said crime was committed by preparing bogus bills in the name of fictitious transport for having carried the goods from the National Textile Corporation godown at Coimbatore to various showrooms. Like the previous case, he has also spoken to about Exs P1 to P43. Prosecution inspite of all the charges levelled against the accused examined 23

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witnesses. When incriminating circumstances were put to the accused, the accused denied the complicity with the crime.

14.After going through the oral and documentary evidence, the learned trial Judge has convicted the accused A2, the only accused who is alive on the date of Judgment under Section 120-B IPC r/w 420 IPC,409 IPC and under Section 5(1)(c) and 5(1)(d) r/w 5(2) of Prevention of Corruption Act 1947 and under Section 420 IPC(4 counts) ; under Section 109 r/w 409 IPC (2 counts);under Section 5(1)(d) r/w5(2) of Prevention of Corruption Act 1947(4 counts) and to sentence to undergo one year rigorous imprisonment under Sections 5(1)(c), 5(1)(d)r/w 5(2) of Prevention of Corruption Act 1947 and a fine of Rs.500/- in default three months rigorous imprisonment and under Section 420 IPC(4 counts) in each count a fine of Rs.500/- and one year rigorous imprisonment in each count, in default, three months rigorous imprisonment in each count;under Section 109 r/w 409 IPC (2 counts) to undergo one year rigorous imprisonment in each count and a fine of Rs.500 /- in each count in default one year rigorous imprisonment in each count; under Section 5(1)(d) r/w 5(2) of Prevention of Corruption Act (4 counts) to undergo one year rigorous imprisonment and a fine of Rs.500/- in each count in default three months rigorous imprisonment and acquitted A2 in respect of other charges and ordered to sentence to run concurrently. The total fine amount comes to Rs.5500/-. Aggrieved against the findings of the learned Trial Judge, the second accused has preferred this appeal(Crl.A.No.1073/2003).

15.Now the point for consideration in these appeals is

> Whether the conviction and sentence imposed by the learned trial Judge in C.C.NO.2 of 1998 and 3 of 1998 respectively under various provisions of law on the file of the Court III Additional District Judge (CBI Cases) Coimbatore is liable to be set aside for the reasons stated in the grounds of appeals viz., Crl.A.Nos.195/1999 and 1072/2003?

16. I heard Mr.K.V.Sridharan, learned counsel appearing for the appellant and Mr.N.Chandrasekaran, learned Special Public Prosecutor for CBI Cases and considered their respective submissions.

17. The Point:

Mr.K.V.Sridharan, learned counsel appearing for the appellant in both the appeals would represent that he is not going to make submissions with regard to the conviction of the appellant(A2) in both the cases under various provisions of law under IPC and under the Prevention of Corruption Act 1947 but he would submit only with regard to the modification of sentence in both the appeals that too in respect of an offence under Prevention of Corruption Act 1947.

18. The learned counsel would represent that the prosecution has

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filed the charge sheet under the Prevention of Corruption Act 1947 and that A2 even at the time of questioning under Section313 Cr.P.C was aged 60 and in his written submissions, he has stated about his ailment due to his advanced age. Section 313 Cr.P.C. proceedings took place on 7.11.2002.

19. The trial Judge has convicted the accused as per the provisions under Prevention of Corruption Act 1988 without considering the fact that prosecution has filed only under the Prevention of Corruption Act of the year 1947. The learned counsel would contend that the minimum punishment is prescribed as one year under Prevention of Corruption Act 1988. But under Section 5 of the Prevention of Corruption Act 1947,there is a proviso attached to Section 5,according to which the Court may for any special reasons recorded in writing impose a sentence of imprisonment of less than one year and contended that considering the advanced age of the accused some leniency in the punishment may be shown to the second accused/appellant herein. The special circumstances for consideration for a lessor punishment pleaded by the learned counsel for the appellant is that A2 had spent nearly 1/3rd of his life in attending the Court in respect of this case and that the accused is more than sixty years of age and his wife is suffering from serious ailment and the accused himself is a cardiac patient requires continuous medical treatment and inspite of his old age and ailment, the accused had attended the Court regularly and had undergone the ordeal of trial for number of years with fear of conviction in his mind and the offence took place in the year 1980-81 and the First Information Report was registered only in the year 1982 and thus nearly 24 years have lapsed since the date of registration of the First Information Report. Under such circumstances, the learned counsel appearing for the appellant would plead that instead of the sentence to under go one year, the accused may be directed undergo a punishment of "till the raising of the Court".

20. I have carefully considered the above submission made by the learned counsel appearing for the appellant and also considered the submissions of the learned Special Public Prosecutor(CBI Cases) who also admits that the conviction ought to have been given under Prevention of Corruption Act 1947 and he has no serious objection for the above suggestion made by the learned counsel appearing for the appellant considering the age and health factor of the accused. Under such circumstances, I hold that the appeals are liable to be dismissed in respect of finding regarding the conviction and, the sentence alone is to be modified as indicated above. The point is answered accordingly.

21. In fine, both the appeals are dismissed but the sentence alone is modified to that of till raising of the Court under Sections 120-B r/w 420, 409 r/w 5(1)(c) and 5(1)(d)r/w 5(2) of Prevention of Corruption Act 1947. As far as the fine amount is concerned, the trial Courts finding is

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confirmed. The accused/the appellant herein shall appear before III Additional Distrct Judge(CBI Cases) Coimbatore on 26.2.2007 to undergo the above said sentence in both the appeals.

sg

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1.The III Additional District Judge/Special Judge for
CBI Cases,Coimbatore.

2. The Officer in Charge,
Special Police Establishment CBI,
GOW Cochin, Kerala Branch,

3. The Deputy Superintendent of Police, Special Police,
Establishment (CBI Police)/GOW, Chennai Branch,Chennai.

4. The Special Public Prosecutor,
CBI Cases, Chennai,

2 CCS to Mr. K.V. Sridharan SR 4657 & 4658.

RL (co)
sg 2/2/07

Crl.A.Nos.195/1999
& 1073/2003

24.01.2007

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